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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/743,731	04/25/2001	John Smit	08106-004001	7587

7590 01/21/2004
Y Rocky Tsao
Fish & Richardson
225 Franklin Street
Boston, MA 02110-2804

EXAMINER

STEADMAN, DAVID J

ART UNIT	PAPER NUMBER
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1652

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/743,731	Applicant(s) SMIT, JOHN	
	Examiner David J Steadman	Art Unit 1652	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attachment.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-6.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

ADVISORY ACTION

[1] Claims 1-6 are pending in the application.

[2] Claims 1-6 stand finally rejected.

[3] The request for reconsideration in the after final amendment filed December 19, 2003, is acknowledged. While the amendment would appear to overcome the objection and rejections as set forth in items 6-8 of the Office action mailed July 14, 2003, the amendment does not place the application in condition for allowance because the amendment would require further consideration of the claims and a new search. See MPEP § 714.13 regarding non-entry of an after final amendment. Specifically, claim 1 part (a) as presented in the after final amendment presents a new limitation, *i.e.*, "at least about 120 amino acids of the C-termin[us] and no more than about 405 amino acids of the C-termin[us]" of a *C. crescentus* S-layer protein. The introduction of this limitation would require further consideration and a new search as the *C. crescentus* S-layer protein fragment as presented in claim 1 in the amendment filed July 14, 2003 does not structurally limit the fragment to a specific number of amino acids or region of the *C. crescentus* S-layer protein.


[4] Applicant's arguments have been fully considered. However, in view of the non-entry of the amendment filed December 19, 2003, applicant's arguments are not found persuasive and the rejections and/or objections as set forth in the Office action mailed September 17, 2003 are maintained for the reasons of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Steadman, whose telephone number is (703) 308-3934 ((571) 272-0942 after 01/21/04). The Examiner can normally be reached Monday-Friday from 7:00 am to 5:00 pm. If attempts to reach the Examiner by

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telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy, can be reached at (703) 308-3804 ((571) 272-0928 after 01/21/04). The FAX number for submission of official papers to Group 1600 is (703) 308-4242. Draft or informal FAX communications should be directed to (703) 746-5078 ((571) 273-0942 after 01/21/04). Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Art Unit receptionist whose telephone number is (703) 308-0196.

David J. Steadman, Ph.D.
Patent Examiner
Art Unit 1652


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1600